ANNUAL REPORT

for the fiscal year
ending March 31, 2011

Workers' Advisers Program

NOVA SCOTIA

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[date]

The Honourable Marilyn More
Minister of Labour & Advanced Education
5151 Terminal Road
Halifax, NS

Dear Minister More:

In accordance with Section 268 of the *Workers' Compensation Act*, S.N.S. 1994-95 c.10 (as amended) (Part III), I have the honour of submitting the report of the Workers' Advisers Program for the period April 1, 2010, to March 31, 2011.

Yours truly,

Kenny LeBlanc
Barrister & Solicitor
Chief Worker Adviser

copy: Judith Ferguson, Deputy Minister
Labour & Advanced Education

copy: Barbara Jones Gordon, Executive Director
Labour Services Branch
Labour & Advanced Education

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Letter from the Chief Worker Adviser

The Workers' Advisers Program had another busy and productive year in 2010/2011. At year-end the Program had 977 active files. During the year the Program had 1040 requests for service, 983 files were opened, and we provided service to 1907 clients.

The majority of the Program's work continued to be at the Workers' Compensation Appeals Tribunal. In 2010/2011 the Program filed 393 appeals with the Appeals Tribunal on behalf of workers. We also filed 170 appeals to Hearings Officers and 5 appeals to the Nova Scotia Court of Appeal.

We didn't have much success this year in appeals to the Nova Scotia Court of Appeal. However, the Court's decisions in *Gillis-Andrea* and *Brewer* at least gave us more clarity about when workers are covered under the *Workers' Compensation Act* and the scope of workers' entitlement to workers' compensation benefits.

The average wait time for intake services was 6.4 weeks, a little over the Program's target of 6 weeks. The most important reason for this statistic is the increasingly litigious and adversarial nature of our work. Whereas just a few years ago active employer involvement in appeals was not common, employers now regularly contest workers' appeals. This issue has significant implications for the workers' compensation system, including contributing to delays in dealing with appeals, and warrants further discussion among stakeholders in the workers' compensation system.

The Program also finished the year just slightly over budget, at 102% of our authority. One reason for this statistic is the increasing costs associated with obtaining medical information the Program requests to help in the pursuit of workers' appeals. The need to obtain medical information in more cases is also related to the greater litigiousness of our work.

Another reason for being over budget was that in March 2010 we received approval for an Articled Clerk to work at the Program. It then took time to arrange for advertising, interviews, and hiring the successful candidate for the position, who started in September 2010. The costs associated with the Articled Clerk position, including for mandatory education, was not included in the 2010/2011 budget authority for the Program and those costs were covered within the existing budget authority.

I served as principal for the Articled Clerk, the first time I ever did this. I also believe this was the first time the Workers' Advisers Program hired an Articled Clerk. This was a valuable and rewarding experience for me and the whole office. The Articled Clerk position also aligned well with the Program's succession planning as we have staff that are nearing retirement.

In May 2010 I participated in a day-long symposium for employers hosted by the Office of the Employer Advisor. In this symposium I sat on a panel that took questions from the audience and I also took part in a mock Appeals Tribunal hearing. Staff from the Appeals Tribunal and the Workers' Compensation Board also took part in this symposium. This

was a good experience and provided an opportunity for employers to learn more about Nova Scotia's workers' compensation system.

In September 2010 I attended the annual CAWAA meeting, held this year in western Newfoundland. This meeting and CAWAA telephone conferences throughout the year are great opportunities to network and exchange information with counterparts from across the country.

In October 2010 I made a presentation to a meeting of the federal Bureau of Pension Advocates, who represent military and RCMP staff seeking benefits relating to injuries arising from their service. My presentation dealt with the role of the Workers' Advisers Program and some legal issues of interest to provincial and federal advocates for workers' benefits and interests. Attending this meeting was a great opportunity to network and exchange information with federal counterparts.

In November 2010 I sat on a panel and made a presentation to labour and worker representatives at a symposium on workplace stress hosted by the Office of the Worker Counsellor. We had a lively discussion about workplace stress, including the possibility of a challenge under the *Canadian Charter of Rights and Freedoms* against the current restrictions on paying workers' compensation benefits for workplace stress.

I continued to serve as a member of the Heads of Agencies Committee and the Issues Resolution Working Group as we worked to try to improve services to stakeholders of the Workplace Safety and Insurance System (WSIS). In my role as Chief Worker Advisor, I participated in the WSIS Annual General Meeting in May 2010 and the WSIS Fall Consultation Conference in November 2010.

I also continued to meet and discuss various workers' compensation issues with Ms. Jessie Parkinson of the Office of the Workers' Counsellor and members of Injured Workers' Associations in the province.

Over the course of the year, myself and other staff from the Workers' Advisers Program worked with the WSIS Liaison Officer, a pilot project position operated out of the Workers' Compensation Board's Legal Department, to try to resolve certain appeals in an informal manner and quicker than if they had proceeded along the ordinary appeal route.

I continued in my role as Chair of the Human Resource Initiatives Team for the Department of Labour and Advanced Education. I also regularly attended meetings of the Department's Senior Management Team and with my fellow directors from the Department's Labour Services Branch.

We look forward to another busy and successful year in 2011/2012.

Submitted,

Kenny LeBlanc
Chief Worker Adviser

Mandate and History

Workers injured and covered under Nova Scotia's *Workers' Compensation Act* are protected through benefits and services available under a no-fault insurance system. Through what is known as the historic trade-off, workers and their families give up the right to sue for the consequences of work-related injuries in return for compensation payable regardless of fault and without the need to pursue a lawsuit in court. The other side of the historic trade-off is that employers are responsible to pay assessments to cover the cost of the system in return for immunity from liability due to work-related injuries.

The Workers' Compensation Board of Nova Scotia (WCB), established under Part I of the *Act*, is the policy-leader for the workers' compensation system, administers the Accident Fund made up of employers' assessments which covers the costs of the system, and is responsible for investigating and adjudicating claims in the first instance. Workers or employers may appeal WCB decisions to the Nova Scotia Workers' Compensation Appeals Tribunal (WCAT), established under Part II of the *Act*. There is a limited right of appeal from WCAT decisions to the Nova Scotia Court of Appeal.

The Workers' Advisers Program of Nova Scotia is established under Part III of the *Act* and the regulations as an independent legal clinic to provide free assistance, advice, and representation to injured workers and their families claiming workers' compensation benefits and who meet the Program's eligibility criteria. As a general rule, if the Program determines that a worker has a reasonable expectation of success of obtaining at least $500 or its equivalent in an appeal of a claim, that worker will meet the Program's eligibility criteria for service.

The Program receives the funding for its operations by way of a grant from the Accident Fund.

The Chief Worker Adviser is responsible for supervising the Program and reports to the Minister of Nova Scotia's Department of Labour and Advanced Education. The Program's head office is in Halifax and we have an office in Sydney.

Workers' Advisers (who are lawyers and non-lawyers) with the Program travel throughout the province to meet with workers and discuss their claims and represent them at hearings at all levels of appeal in the workers' compensation system, including Court if necessary. Only Workers' Advisers who are lawyers are allowed to represent workers in Court.

The Workers' Advisers Program was established in February 1996 when Part III, along with most of the rest of the current *Workers' Compensation Act*, was proclaimed into force. The Program under Part III replaced the former Workers' Counselors' Program, which administered a certificate system whereby private law firms around the province provided legal representation to workers in connection with their workers' compensation claims.

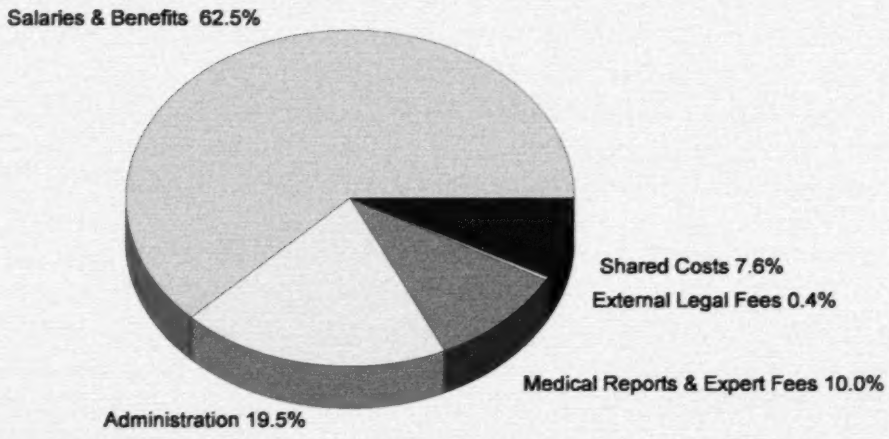
The Program's staff arranged for the opening of the Sydney office in May 1997. The Program has maintained the Halifax and Sydney offices since that time, while monitoring the caseload by county to determine whether other offices in other parts of the province should be opened.

Annual Program Expenditures

The total cost associated with the operation of the Program is charged to the Accident Fund administered by the WCB. The final 2010-2011 report provided by the Department of Finance indicates the following expenditures:

	2010-11	2009-10	2008-09	2007-08	2006-07	2005-06
Salaries & Benefits	$1,717,753	$1,593,543	$1,643,841	$1,327,695	$1,390,072	$1,270,467
Administrative	$534,275	$547,932	$520,494	$553,318	$414,064	$532,192
Legal Services - External	$10,731	$2,067	$1,895	$306	$2,156	$1,007
Medical Reports & Expert Fees	$275,182	$257,401	$138,257	$101,843	$74,773	$109,816
Consulting Fees						$26,875
Less Chargeable to other departments	($27,210)	($11,162)	($102,310)	($32,568)		
TOTAL	**$2,510,731**	**$2,389,781**	**$2,202,177**	**$1,950,594**	**$1,881,065**	**$1,940,356**
% of Authority Spent	**102.0%**	**97.1%**	**89.5%**	**82.1%**	**83.1%**	**84.8%**

2010-11 Expenditures

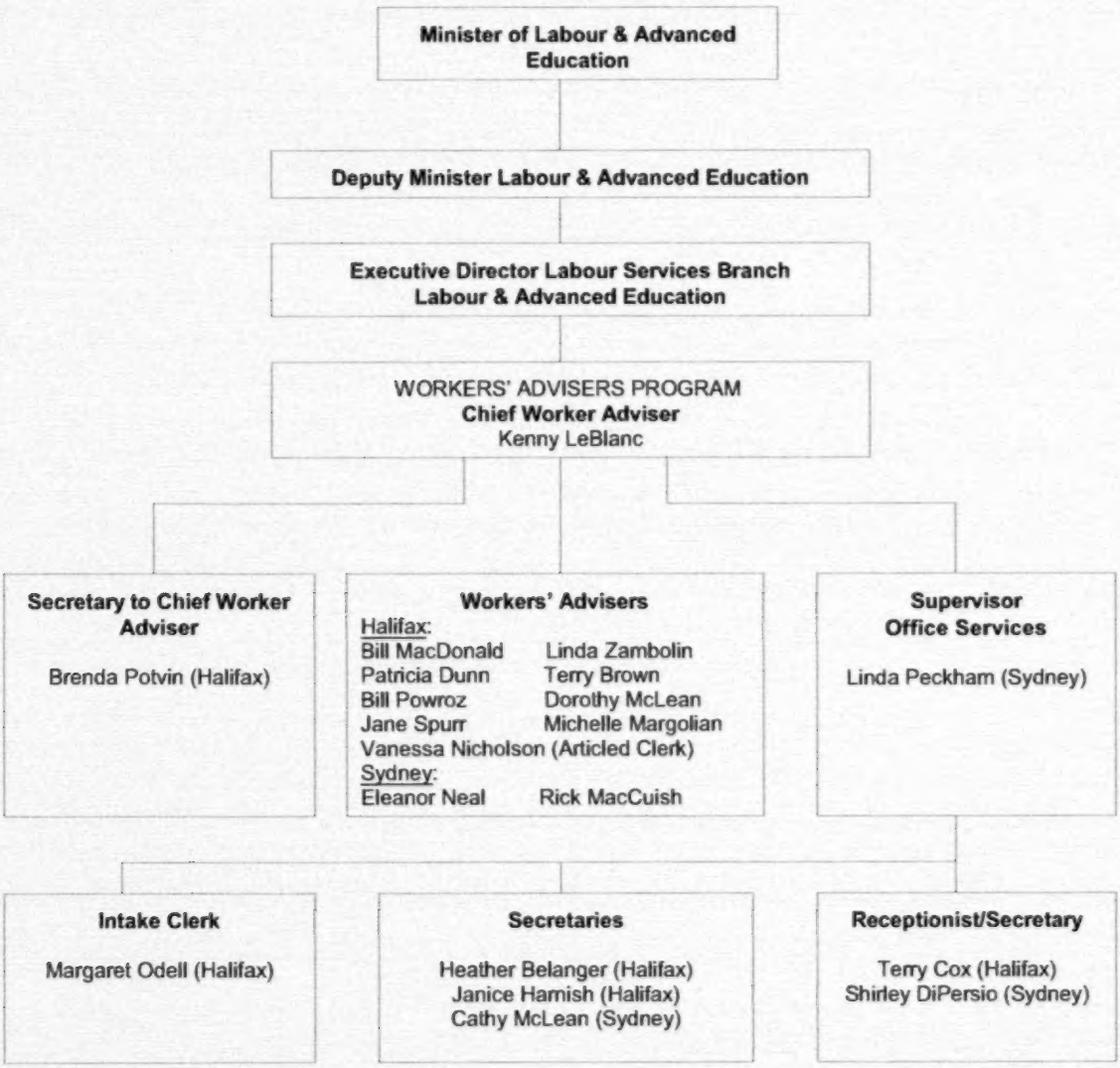


Personnel

The Chief Worker Adviser, the Secretary to the Chief Worker Adviser, the Intake Clerk, eight Workers' Advisers, a secretary/receptionist, and two secretaries work out of the Halifax office.

Two Workers' Advisers, the Program's Supervisor Office Services, a secretary/ receptionist, and a secretary work out of the Sydney office.

Organizational Chart



(Incumbents in place as of March 31, 2011)

Client Services

The service provided to workers by the Workers' Advisers Program can include representation through all phases of appeal in the workers' compensation system. It can begin with the first denial at the WCB and end when an appeal is completed or the worker is no longer eligible for service.

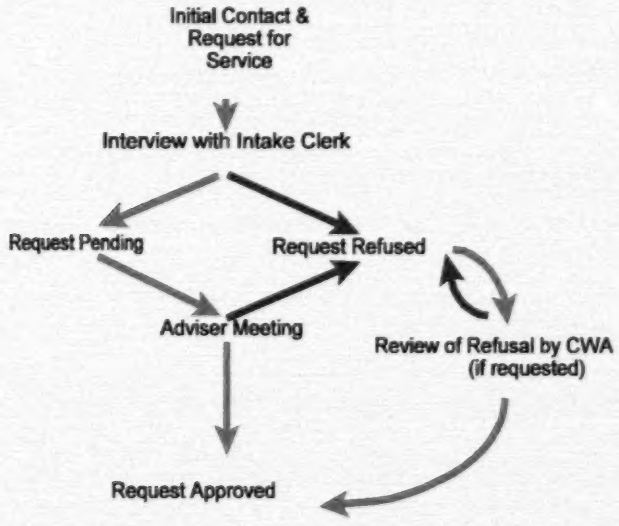
Intake

The Program's intake process first determines if the worker's request for service results from a written WCB decision. The Program's Intake Clerk is the point person for a worker's initial contact with the Program. If the worker does not have a written decision, the Intake Clerk will usually refuse service, but that worker may be referred to the Office of the Worker Counselor for assistance.

If the worker has a written WCB decision, the Intake Clerk will take the necessary information and open a file which will be assigned to a Workers' Adviser. Subsequently, the Workers' Adviser will contact the worker and arrange to discuss the claim and appeal in person or by telephone.

A worker refused service may request the application to be forwarded to the Chief Worker Adviser for review and further consideration.

A worker requesting service from the Program for the first time as a result of a WCAT decision bypasses the usual intake process and is referred directly to the Chief Worker Adviser for review and consideration. This process is followed in relation to WCAT decisions because a worker only has 30 days under the *Workers' Compensation Act* to file a possible appeal to the Nova Scotia Court of Appeal from a WCAT decision.



Operations

Case Summary Statistics

Active # files at year beginning April 1, 2010 = 924
Active # files at year ending March 31, 2011 = 977

2010-11	Requests for Service	Files Opened	Files Closed	# Clients Served 2010-11
Apr/May/Jun	244	229	225	1153
Jul/Aug/Sep	257	277	234	1430
Oct/Nov/Dec	276	178	210	1608
Jan/Feb/Mar	263	299	211	1907
Total for year	**1040**	**983**	**880**	**1907**

"Requests for Service" represents the number of calls received by the Intake Clerk for processing during each of the reporting periods.

The "# Clients Served 2010-11" represents the number of active files on April 1, 2010, combined with the total number of files opened to the end of the fiscal year (March 31, 2011).

On March 31, 2011, there were 119 pending service requests or clients that had gone through the intake process but had not yet been contacted by a Workers' Adviser to discuss their case.

Process

Service Waiting Time

Intake Period 2010-11	Halifax	Sydney	Out-Town		
			Bridgewater /Yarmouth	Digby/ Kentville/ Amherst/ Truro	New Glasgow/ Antigonish/ Port Hawkesbury
April/May/June	4.7	8.9	4.5	4.8	4.6
July/August/September	5.8	6.6	4.9	4.5	5.8
October/November/December	7.8	7.6	6.3	6.3	7.3
January/February/March	8.5	6.6	6.9	8.5	6.2
Area Averages	6.7	7.4	5.7	6.0	6.0
Local Offices Average Waiting Period			7.1 weeks		
Out-of-Town Average Waiting Period			5.9 weeks		
Provincial Average Waiting Period			6.4 weeks		

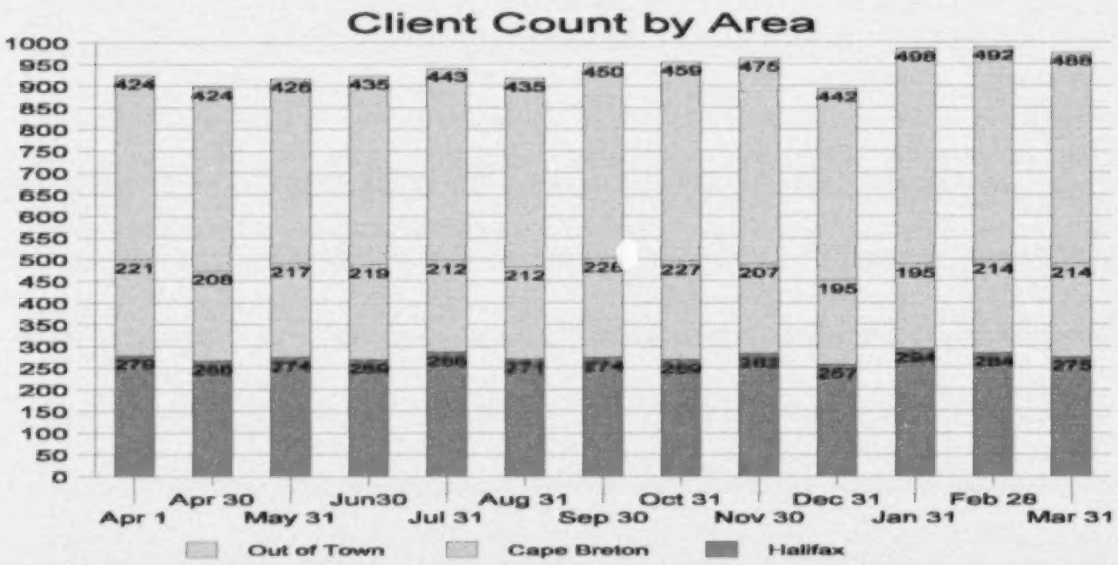
The Program continues to monitor the waiting time for service on a monthly basis. Our goal is to respond to requests for service by meeting with the worker within 6 weeks of their initial request. **The provincial average waiting period for 2010-11 was 6.4 weeks (includes local and out-of-town times).**

The waiting period for service for all intake is calculated from the date the worker first contacts the Intake Clerk to the date of the worker's first appointment with a Workers' Adviser (in person or by telephone) to discuss the worker's appeal. Factors affecting service wait times include access to the WCB claim file, both paper and electronic, and the Workers' Advisers' travel to out-of-town appointments and workload.

Client Count by County

On April 1, 2010, the Program had 927 active files. On March 31, 2011, there were 977 active files, a 5.4 percent increase over the course of the year with an average of **942** open files between April 1 and March 31.

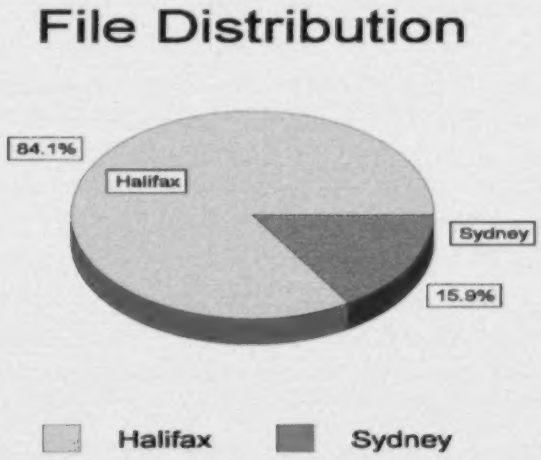
County	Apr 1	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar 31
Annapolis	**17**	16	18	19	22	21	21	22	25	24	27	24	**23**
Antigonish	**12**	13	14	15	14	14	14	13	12	12	15	14	**13**
Cape Breton	**221**	208	217	219	212	212	228	227	207	195	195	214	**214**
Colchester	**25**	26	28	29	30	32	32	30	34	29	33	33	**34**
Cumberland	**59**	58	56	54	53	46	49	51	55	53	59	59	**60**
Digby	**4**	4	3	3	4	5	5	6	7	7	8	7	**7**
Guysborough	**14**	15	15	17	16	16	15	16	13	13	16	14	**14**
Halifax	**279**	266	274	269	286	271	274	269	282	257	294	284	**275**
Hants	**37**	38	40	45	45	46	47	46	52	46	51	51	**48**
Inverness	**12**	14	15	13	12	10	9	9	9	9	11	10	**10**
Kings	**53**	53	53	56	65	64	68	69	75	66	67	66	**69**
Lunenburg	**77**	76	76	74	76	76	83	82	78	69	78	81	**81**
Pictou	**44**	42	45	47	53	49	50	53	51	48	59	56	**54**
Queens	**14**	15	15	14	13	15	15	16	18	14	15	15	**14**
Richmond	**14**	13	10	11	8	8	7	10	10	11	12	14	**14**
Shelburne	**12**	12	12	12	8	9	10	9	11	10	12	13	**13**
Victoria	**4**	4	4	5	4	4	5	4	4	5	5	6	**6**
Yarmouth	**9**	9	8	7	4	4	5	6	8	8	12	12	**12**
Other	**17**	16	14	14	16	16	15	17	20	18	18	17	**16**
Total	924	898	917	923	941	918	952	955	971	894	987	990	**977**



- The above chart graphically displays the proportion of clients living in Halifax, Cape Breton and Out of Town. The Out of Town figures represent all clients living outside metro Halifax or Cape Breton.

  An average of 29.2 percent of the Program's clients live within the Halifax Regional Municipality; 22.5 percent live within the Cape Breton Regional Municipality and 48.3 percent reside outside the CBRM or HRM areas.

- Files are distributed between the Halifax and Sydney offices. One of the Advisers serving the Sydney area is located in Halifax.



Representation

Workers' Advisers provide representation to injured worker and their families pursuing workers' compensation benefits and services. Workers' Advisers consult with workers and others regarding claims, attend meetings and hearings, and obtain evidence and present it to workers' compensation decision makers.

Workers' Advisers have good access to research and other resources required to pursue appeals and are familiar with issues and pressures affecting injured workers and strive to achieve an effective working relationship with them.

The Workers' Advisers Program does not represent injured workers as a special interest group or lobby government for changes in legislation. The Program does not pursue other matters outside of workers' compensation claims, such as Canada Pension benefits, Unemployment Insurance, or Social Assistance.

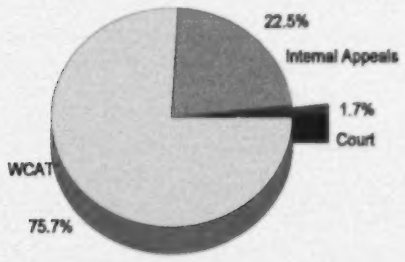
Workers' Advisers do not represent employers and they do not advise or represent governments or other agencies.

Program Statistics

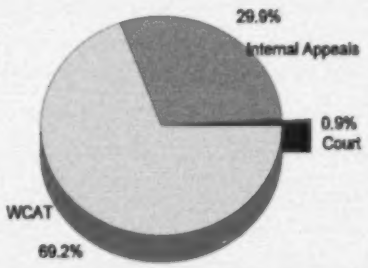
	Submissions/Hearings Done			New Appeals Filed		
	Court	Hearing Officer	WCAT	Court	Hearing Officer	WCAT
April	0	10	38	0	15	39
May	1	9	24	0	7	20
June	0	10	29	0	19	33
July	1	11	33	0	15	47
August	0	5	21	0	18	31
September	1	6	25	1	13	27
October	1	18	42	1	7	25
November	2	8	40	0	13	40
December	1	7	29	1	14	34
January	0	11	36	1	26	30
February	0	13	37	0	10	30
March	2	8	36	1	13	37
TOTAL	**9**	**116**	**390**	**5**	**170**	**393**

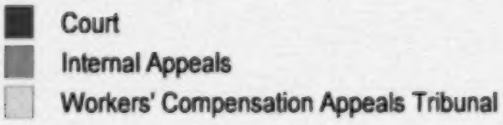
- The Program's resources are mainly focussed on appeals at the WCAT level.
- Workers typically file their own appeals to the Hearing Officer before going through the Program's intake process.
- The Program filed 5 new appeals were filed to the Court of Appeal during the year 2010/2011. The ability to appeal to the Court of Appeal is limited because an appeal can only be made from an Appeals Tribunal decision on a question of law or jurisdiction pursuant to s.256 of the *Workers' Compensation Act*.

Hearings/Submissions



New Appeals Filed





Client Satisfaction

Client Survey Results

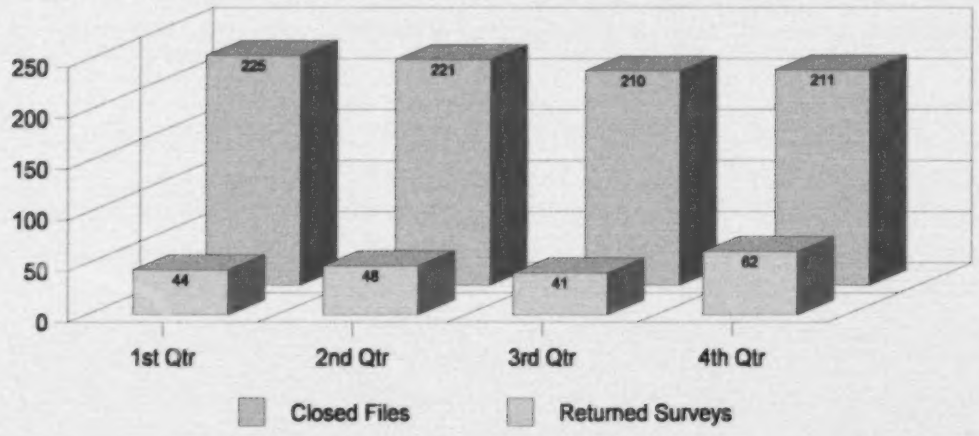
The Program began mailing satisfaction surveys to clients with their closed file in April 2003. This practice will continue so that future results will allow us to track satisfaction trends and address service issues.

	Apr/May /Jun	Jul/Aug/ Sep	Oct/Nov/ Dec	Jan/Feb/ Mar	Total	% Return for Year
Closed Files	225	221	210	211	867	
Returned Surveys	44	48	41	62	195	**22.5%**
Provided Comments	27	32	29	47	135	**69.2%**
Not Positive Outcome	14	13	11	16	54	**27.7%**
Negative Comments	2	3	2	3	10	**5.1%**
% Return for the Quarter	21.5%	21.7%	13.3%	23.5%		
Variance from previous quarter	5.8%	0.2%	-8.4%	10.2%		

Although 27.7% percent of the clients returning surveys did not have a positive outcome with respect to their appeal (54 divided by 195 surveys returned), only 10 negative comments were received (5.1%). **Our satisfaction rate remains high.**

Based on the data obtained from the returned surveys, we can determine that **92.3%** of our clients **"strongly agreed" or "agreed"** that the service provided by the Program staff satisfied their requirements.

Surveys Returned /Files Closed



Specific results to our questions are as follows:		Strongly Agree	Agree	Disag ree	Strongly Disagree
1. The program staff I dealt with were professional and friendly at all times.	*Apr/May/Jun*	74.4%	22.8%	0.0%	0.0%
	Jul/Aug/Sep	83.3%	14.7%	2.0%	0.0%
	Oct/Nov/Dec	69.4%	26.4%	2.1%	2.1%
	Jan/Feb Mar	78.6%	15.1%	2.9%	3.3%
	% for year	**76.4%**	**19.8%**	**1.8%**	**1.4%**
2. In my experience, I felt the program staff had the knowledge and experience for dealing with my situation.	*Apr/May/Jun*	72.2%	20.0%	3.3%	1.7%
	Jul/Aug/Sep	77.5%	16.6%	2.0%	2.0%
	Oct/Nov/Dec	64.2%	29.4%	4.3%	4.1%
	Jan/Feb Mar	70.6%	19.7%	5.0%	4.6%
	% for year	**71.1%**	**21.4%**	**3.7%**	**3.1%**
3. I felt the program staff did their very best to provide me with the best possible service.	*Apr/May/Jun*	72.8%	16.7%	4.4%	3.3%
	Jul/Aug/Sep	74.4%	17.4%	6.4%	1.9%
	Oct/Nov/Dec	71.0%	22.7%	2.2%	4.2%
	Jan/Feb Mar	74.9%	15.5%	5.0%	4.6%
	% for year	**73.2%**	**18.1%**	**4.5%**	**3.5%**
		All the time	Most of the time	Sometimes	Never
4. My calls were returned within 24 hours.	*Apr/May/Jun*	66.1%	21.6%	4.4%	3.3%
	Jul/Aug/Sep	64.2%	20.4%	13.6%	1.9%
	Oct/Nov/Dec	65.2%	26.4%	2.2%	6.3%
	Jan/Feb Mar.	61.8%	25.1%	11.8%	1.3%
	% for year	**64.3%**	**23.4%**	**8.0%**	**3.2%**
5. My question were answered to my satisfaction.	*Apr/May/Jun*	68.9%	25.0%	0.0%	3.3%
	Jul/Aug/Sep	78.4%	14.6%	5.8%	2.8%
	Oct/Nov/Dec	83.9%	11.8%	0.0%	4.3%
	Jan/Feb Mar	83.2%	8.8%	5.0%	2.9%
	% for year	**78.6%**	**15.1%**	**2.7%**	**3.3%**
Satisfaction rating		**92.3%**		**7.0%**	

Committees and Associations

Canadian Association of Workers' Advisers and Advocates

The Canadian Association of Workers' Advisers and Advocates (CAWAA) is a national organization established to develop a professional system of sharing information and best practices across jurisdictions and explore emerging workers' compensation issues relevant to workers while respecting its members' distinct workers' compensation mandates.

The Chief Worker Adviser represents the Nova Scotia Workers' Advisers Program at this association and chairs its Research Committee. Additional information on this association is available on their website: http://cawaa.org/

Workplace Safety and Insurance System Advisory Councils and Working Groups

Nova Scotia's **Workplace Safety and Insurance System** (WSIS) includes workers, employers, the relevant statutory agencies (the WCB, WCAT, the Occupational Health and Safety Division of the Department of Labour and Advanced Education, and the Workers' Advisers Program), and others who provide services in the system. Additional information is available on the WSIS website: http://www.wsis.ns.ca/index.php

The **System Liaison Committee** is comprised of representatives of the worker and employer communities, each of the four system partner agencies (the WCB, WCAT, the Occupational Health and Safety Division of the Department of Labour and Advanced Education, and the Workers' Advisers Program), members of the Occupational Health and Safety Advisory Council and members of the WCB's Board of Directors. The role of this Committee is to advise the WSIS Coordinating Committee (consisting of the Chair of the WCB Board of Directors and the Deputy Minister of the Department of Labour and Advanced Education) on various workers' compensation issues.

The **Issues Resolution Working Group** and a sub-committee, the **Issues Discussion Group,** consist of representatives from the Workers' Advisers Program, the WCB, and WCAT, and meets regularly to discuss workers' compensation issues and advise system partners on ways to improve issues resolution in the workers' compensation system.

The **Heads of Agencies Committee** is comprised of the heads of the four statutory system agencies:

- Director of the Occupational Health and Safety Division;
- Chief Worker Adviser of the Workers' Advisers Program;
- Chief Appeal Commissioner of WCAT; and
- CEO of the WCB.

Members of the Heads of Agencies Committee are responsible for the ongoing delivery of service to workers and employees in the system and for measuring and reporting of outcomes and progress in alignment with system goals. They are also responsible for coordinating strategic plan implementation.

Other Committees and Associations

Workers' Advisers Program staff are involved in other committees and associations to enhance their contribution to the workers' compensation system, the Department, and community. They include:

- Joint Occupational Health and Safety Committee
- Labour and Advanced Education Senior Management
- Nova Scotia Barristers' Society
- Canadian Bar Association
- Labour and Advanced Education Human Resource Initiatives Team
- United Way Campaign
- French Language Services Committee
- Canada Games
- Human Resources Initiative Team
- Labour and Advanced Education WebSite Committee
- Labour and Advanced Education Diversity Committee.

Professional Development and Training

This year, as in the past, Program staff members took part in training programs to enhance their professional skills and personal development. Workers' Advisers attended various Canadian Bar Association (CBA) professional development courses such as:

- CBA 2011 Annual Conference - Practice Makes Perfect: Practical Law for the Practising Lawyer
- Update on Solicitor-Client Privilege: Case Studies
- The Challenges of Canadian Mental Health
- Privacy and Access and Labour and Employment Law

Courses taken through the Nova Scotia Barristers' Society were:

- Capacity to Instruct Counsel;
- Mental Health and the Workplace;
- What Every Lawyer Needs to Know about Mental Health;
- Writing to Persuade;
- Bar Skill; and
- Negotiating Strategies for Lawyers

Staff members attend Departmental mandatory training, including First Aid/CPR, Introduction to Occupational Health and Safety, Ergonomics, Respectful Workplace, and Diversity and Employment Equity Education as required and workloads permit.

Other training included:

- Conflict Resolution - Breaking the Impasse (St. Mary's University)
- Mediation Skills (St. Mary's University)
- Office Ergonomics: Hazard Assessment & Problem
- SAP: Time Entry – Attendance/Absences
- MS Word for WordPerfect Users
- OH&S Investigations
- Labour Relations Training
- Training – Manager Self Service
- Performance Management MCP
- Employee Assistance Program – Training for Managers